

ALTS: SANCTION SBC FOR FRIVOLOUS AND MISLEADING LONG DISTANCE BID - 2

"As a first step, the FCC should immediately reject this spurious filing and consider sanctions against SBC," Gold said. "But even more importantly, the FCC needs to send a stern warning to all incumbent Bell monopolies against filing petitions that clearly fail to meet the standards of the law, that waste the precious resources of regulators and commentators alike, and whose only purpose is to wear down resistance among policymakers."

In its Section 271 application under the Telecommunications Act, SBC cited network interconnection agreements with competitive local telephone companies as evidence of competition in Oklahoma. In public statements, SBC made specific reference to competitive residential service offered by Brooks Fiber Properties -- in deliberate defiance of the facts presented by Brooks.

"Despite the fact that Brooks expressly informed SBC that Brooks did not provide residential service, SBC nonetheless completely and intentionally misrepresented the facts by claiming that Brooks was providing residential service," said John C. Shapleigh, Executive Vice President of Brooks Fiber Properties.

"I say 'three strikes and they're out,' " Shapleigh added. "After two 'jump the gun' applications by Ameritech and now one by SBC, the FCC should recognize that the RBOCs are 'habitual offenders' with respect to premature 271 applications, and establish stringent standards and penalties to deter such frivolous filings."

SBC is the second Bell monopoly to petition the FCC to offer in-region long distance. Earlier this year, Ameritech filed an initial and then an amended application to offer long distance service in Michigan, and was subsequently turned down due to numerous errors in its filings.

ALTS is the national industry association whose sole mission is to promote local telecommunications competition. Located in Washington, D.C., the organization was created in 1987 and represents companies that build, own, and operate competitive local networks, as well as their suppliers. Currently, ALTS serves 33 local telecommunications companies, and has 39 affiliate members.

FILED

MAR 11 1997

**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA**

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF ERNEST G. JOHNSON,)
DIRECTOR OF THE PUBLIC UTILITY)
DIVISION, OKLAHOMA CORPORATION)
COMMISSION, TO EXPLORE THE)
REQUIREMENTS OF SECTION 271 OF)
THE TELECOMMUNICATIONS ACT OF 1996)

CAUSE NO. PUD 970000064

**INITIAL COMMENTS OF BROOKS FIBER COMMUNICATIONS OF OKLAHOMA,
INC., AND BROOKS FIBER COMMUNICATIONS OF TULSA, INC.**

Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., (hereinafter collectively referred to as "Brooks") submits the following comments in the above-captioned Cause.

INTRODUCTION

These initial comments are sub-divided into three sections. The first section provides a brief summary of Brooks's history of operations and current operational status in Oklahoma. The middle section focuses on Brooks' Oklahoma interconnection agreement with SWBT and interconnection implementation activity thereunder. The final section reviews the key provisions of the Telecommunications Act of 1996¹ related to Bell Operating Company ("BOC") entry into interLATA services.

**1. SUMMARY OF BROOKS OKLAHOMA HISTORY AND CURRENT
OPERATIONAL STATUS.**

While the Commission is familiar with the basic facts concerning Brooks' status in Oklahoma, a brief summary of those facts is provided for the record, as follows: Brooks obtained its initial certification in Oklahoma as a competitive access provider in April, 1996, with authority to provide dedicated intra-exchange and inter-exchange services – i.e., special access and private line services. In August, 1996 that authority was expanded by the Commission's grant to Brooks of authority to operate as a competitive local exchange company ("CLEC"), providing all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service. Brooks Fiber of Communications of Tulsa, Inc., operates in Tulsa and holds authority to provide intrastate services in Oklahoma within the territories of Southwestern Bell Telephone Company ("SWBT") and General Telephone Company ("GTE"), while Brooks Fiber Communications of Oklahoma, Inc., operates in Oklahoma City and holds authority to provide intrastate services in the service territory of SWBT. Brooks has intrastate dedicated and switched services tariffs which have become effective in Oklahoma.

¹ Pub. L. No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C. Secs. 151 et seq.)

Brooks provides telecommunications services through SONET-based fiber optic transmission systems tied into a digital host switch. Currently Brooks' Oklahoma networks consist of a 221 mile transmission system in Tulsa, and a 44 mile system in Oklahoma City. Brooks has deployed one Lucent 5ESS digital host switch each in its Tulsa and Oklahoma City networks, and those switches became operational in January, 1997.²

Brooks has a signed, Commission-approved interconnection agreement with SWBT covering operations in Oklahoma. The interconnection agreement was executed on August 29, 1996 and approved by the Commission by its orders dated October 2, 1996. Shortly after signing the interconnection agreement, Brooks began the process of working with SWBT to implement the physical interconnection of networks (trunking) and other processes necessary for the passage of traffic between Brooks and SWBT. That initial interconnection process was completed in January, 1997, when Brooks and SWBT began exchanging "live" traffic.

Brooks commenced offering switched local exchange services to its first group of customers in January, 1997, once its Oklahoma switches became operational and initial network interconnection and associated systems were implemented with SWBT. At this early stage, Brooks Oklahoma operations are limited -- Brooks is currently providing switched local exchange service to 13 business customers in Oklahoma City (6 via direct on-net connections to Brooks' fiber optic transmission rings, 6 through leased SWBT dedicated T-1 facilities and 1 through resold SWBT ISDN service), and to 7 business customers in Tulsa (2 via direct on-net connections to Brooks fiber optic transmission rings and 5 through leased SWBT dedicated T-1 facilities) and to 3 residential customers in Tulsa and 1 residential customer in Oklahoma City (all through resale of SWBT's local exchange service, and all currently on a test-basis). As explained further below, Brooks' expansion of service to a significant number of customers depends upon its ability to gain access to and utilize leased unbundled loop facilities of SWBT, a prerequisite for which is completion of physical collocations at various SWBT central offices.

To provide context to the discussion of Brooks' current status and plans for operations in Oklahoma, it is important to understand the several potential methods available to a CLEC for offering originating service to customers. Generally, there are three primary methods: (a) on-net origination (i.e., where customers directly connect to the transmission facilities of the CLEC; (b) use of incumbent LEC unbundled network elements (including unbundled loops) in combination with the CLEC's transmission facilities; and (c) resale of the incumbent CLEC's services (i.e., where dial-tone is provided by the incumbent CLEC).

With respect to on-net origination, it is important to recognize that the fiber optic networks of CLEC's like Brooks do not approach the originating reach of the pre-existing, ubiquitous loop/switching/interoffice transmission networks of the incumbent local exchange carriers, which have been deployed in the past under the protective environment of a sanctioned monopoly. While Brooks has been expanding its fiber optic networks across the country and will continually evaluate the economic feasibility of further expansion, there is no realistic scenario under which the network of a fiber optic ring-based CLEC like Brooks will -- in and of itself -- approach the ubiquitous originating reach of SWBT's network. This fact has enormous

² Brooks also plans to deploy remote switches in a number of the physical collocations which are currently under construction at SWBT central offices in Oklahoma City and Tulsa.

implications for Brooks' business operations and for a realistic evaluation of the current and future competitive environment in Oklahoma. It means that Brooks and CLEC's like it are highly dependent upon the incumbent LEC (through lease of the incumbent's unbundled network elements and/or resale of the incumbent's retail services) to expand the CLEC's originating reach beyond the finite limits of its fiber optic rings.

While some carriers may intend to operate by relying primarily or exclusively on resale of the incumbent CLEC's local exchange service for their originating reach, Brooks intends to operate as facilities-based provider – i.e., a CLEC that deploys its own transmission (and, in Brooks' case, switching facilities) and combines those facilities with unbundled network elements of the incumbent CLEC. Brooks will use resale of SWBT's local exchange service to some extent, but only as a secondary method to supplement its primary mode of operation of combining leased³ SWBT unbundled loops with Brooks transmission and switching facilities. As discussed above, Brooks will also provide service on an on-net basis for those business customers located in close proximity to its fiber optic transmission facilities, but it is access to and use of SWBT's unbundled loops which will significantly expand Brooks ability to offer local exchange service in Oklahoma City and Tulsa.⁴

At this point, however, Brooks is not yet in a position to begin utilizing SWBT's unbundled loop facilities in Oklahoma. This is because Brooks will interconnect SWBT's unbundled loops to Brooks' network through collocations (primarily physical collocations⁵) being deployed at various SWBT central offices (six in Oklahoma City and five in Tulsa), and to date none of these collocations has been completed.⁶ Brooks has had collocation applications in

³ It should be noted that the leases of unbundled loops from SWBT are not long-term in nature – i.e., Brooks has the right to use a particular unbundled loop contingent upon the respective end-user's continued purchase of service from Brooks at that particular location and upon Brooks payment of associated charges to SWBT. Brooks does not obtain title to any of the unbundled loop facilities, nor the right to perform its own maintenance or to self-provision the facilities.

⁴ As noted above Brooks has utilized SWBT-provided dedicated T-1 access (sometimes referred to as "type 2" access) to originate dial-tone service for several customers. This approach has been implemented as a partial, stopgap measure prior to the availability of SWBT unbundled loops. This "type 2" approach to offering dial-tone service requires deployment of special network equipment by Brooks and is only economically feasible for providing service to certain customers.

⁵ Physical collocation involves CLEC leasing of dedicated space within an incumbent LEC central office and deployment of transmission (and, in some instances, remote switching) equipment therein for use in obtaining access to unbundled network elements and for interconnection. In physical collocation arrangements, the CLEC purchases and owns the transmission (and, if applicable, the remote switching equipment) located in its collocation space.

⁶ Brooks has pre-existing virtual collocations at one SWBT central office each in Oklahoma City and Tulsa. Those arrangements are provided by SWBT pursuant to its interstate virtual expanded interconnection tariff, which is subject to an FCC investigation regarding the reasonableness of its pricing. These SWBT tariffed virtual collocation arrangements differ in important respects from physical collocation arrangements. With tariffed virtual collocation, the point of interconnection normally is outside of the central office, deployment of remote switching equipment is not permitted, and the interconnector designates but does not own the transmission equipment. Brooks has found SWBT's interstate tariffed virtual collocation to be extremely expensive compared to comparable virtual collocation from most other BOC's. This type of virtual collocation is not usable by Brooks for unbundled loop access due to both network and economic feasibility considerations. Brooks has applications pending to convert these virtual collocations to physical collocation arrangements. Brooks is also in the process of negotiating a contract with SWBT for a different type of virtual collocation – where transmission equipment could be purchased by Brooks and located in common areas of central offices. This would provide Brooks an additional collocation option in central

process for Oklahoma City and Tulsa central offices since as early as June, 1996, but the process has taken significantly longer than what Brooks had expected and longer than what Brooks believes reasonably should have been required for completion. It is Brooks' opinion that these delays have resulted, in significant part, from an SWBT collocation process which Brooks has found to be too inflexible to permit the continuous, interactive communications which are necessary for expeditious processing of technically intricate engineering and construction projects such as these.

Irrespective of the causes of the delays the fact that is that, despite Brooks' best efforts to implement collocations at the earliest possible time, none of its SWBT collocation projects are completed. At this point, Brooks is hopeful that the first group of collocations in Oklahoma City and Tulsa will be completed in the next month or two. Once these collocations become operational, Brooks will be able to begin testing with SWBT's ordering, provisioning, and related operational support systems, and thereafter will be able to commence offering unbundled loop-originated service to customers served from the SWBT central offices where Brooks collocations will be located. Until those collocations are completed and SWBT's unbundled network element support systems have been tested and found to be sufficient, Brooks' operations in Oklahoma will be constricted.

Most recently, Brooks has also experienced initial problems with SWBT in implementation of interim number portability (INP) through remote call forwarding. Because of the early stage of Brooks' switched services operations in Oklahoma, Brooks has had only a few instances of INP implementation with SWBT, but at this point Brooks has experienced problems with every one of these customer conversions - i.e., situations where the SWBT network does not forward calls to the ported number, with the result that the new Brooks customer fails to receive incoming calls for several hours at a time. This early pattern of problems with INP is very troubling to Brooks, since it provides an immediate, negative customer impression which can be very damaging to the success of a new entrant. Brooks is currently investigating this issue with SWBT to solve whatever may be the cause of this INP problem.

II. BROOKS-SWBT INTERCONNECTION AGREEMENT OVERVIEW

As noted above, Brooks and SWBT have a signed, Commission-approved interconnection agreement covering operations in Oklahoma. For purposes of this inquiry into the requirements of Section 271 interLATA long-distance entry, it is important to recognize the context of, and basis for, the Brooks-SWBT interconnection agreement from Brooks' perspective. Like any other CLEC seeking interconnection with a Bell Operating Company ("BOC"), Brooks was faced with decision whether to sign a negotiated agreement or pursue arbitration. However, Brooks' weighting of the factors relevant to that decision were not necessarily the same as may have been made by another CLEC.

In large part, the judgment regarding whether to settle for a negotiated agreement or to arbitrate involves a balancing of the need to obtain the best substantive rates, terms and conditions of interconnection as may be possible, versus timing of interconnection

offices where physical collocation is not feasible. However, the parties are still working on the contract language and none of these new virtual collocations has been deployed to date.

implementation and completion. One of the primary benefits to a CLEC of signing a negotiated interconnection agreement is that it removes uncertainty and accelerates the point at which interconnection implementation can commence compared with the arbitration alternative. It has been Brooks' experience generally across the country with all BOC's, including SWBT, that the BOC will begin working with Brooks on various interconnection implementation tasks (e.g., trunk deployment, 911/E-911 implementation, ancillary service arrangements, resale support systems, etc.) once an interconnection agreement is signed and submitted to the state commission for approval. Thus, in Oklahoma, Brooks began working with SWBT on interconnection implementation issues in September, 1996, soon after the agreement was signed and submitted to the Commission. Completion of these initial implementation steps is necessary before a CLEC can begin to interchange live traffic with the incumbent CLEC's network. In Oklahoma, it took approximately four months for Brooks and SWBT to complete these initial implementation steps and, as noted above, Brooks began limited switched local exchange operations in Oklahoma City and Tulsa in January of this year.

The interconnection implementation timing consideration is particularly important for a CLEC like Brooks which is making substantial relative capital investments in fiber optic transmission systems and digital switching equipment in cities across the nation. As a new entrant into local exchange markets dominated by the BOC possessing the only in-place ubiquitous network, it is essential from both a financial and a marketing perspective for Brooks to quickly begin utilizing its networks by offering service to customers. This timing consideration may be weighed differently by different CLEC's -- i.e., CLEC's such as the major IXC's may have a greater willingness to accept the delays and uncertainties of arbitration due to their pre-existing established revenue base in the long-distance and related telecommunications markets, because of an intent to operate primarily on a resale basis for local exchange service in the near-term, and/or because of the significantly greater resources which they can bring to bear in an arbitration as compared with smaller CLEC's.

The comparative timing benefit for a CLEC from entering into a negotiated agreement becomes clear when one looks to the actual experience of CLEC's that pursue the arbitration route. In Oklahoma, to Brooks' knowledge AT&T and SWBT have yet to submit an interconnection agreement to the Commission for final review and approval, notwithstanding the fact that the Commission issued its arbitration decision for those carriers nearly three months ago. Brooks must assume that because those carriers do not yet have a signed interconnection agreement, no interconnection implementation activity between them has occurred at this point. While it is unclear whether Brooks would have encountered the same type of delay in finalizing an arbitrated interconnection agreement as appears to have occurred between AT&T and SWBT, nevertheless this is precisely the kind of delay and uncertainty (i.e., how long would it actually be before an arbitrated interconnection agreement would be signed and interconnection implementation could commence) which played a significant role in Brooks' evaluation of whether to pursue arbitration itself or sign the best negotiated agreement it could obtain from SWBT when it made its decision in August, 1996.

On the other hand, the disadvantage for a CLEC of signing a negotiated agreement in lieu of arbitration is the loss of the opportunity to obtain the best potential rates, terms and conditions of interconnection in the near-term. It has been Brooks' experience generally that the BOC's,

including SWBT, have been unwilling to provide the best possible rates, terms and conditions to Brooks in the context of interconnection agreements which were negotiated (rather than arbitrated). In one sense this is not surprising since -- for example -- at the same time SWBT was negotiating with Brooks, arbitration petitions by carriers like AT&T were either already filed or were certainly anticipated in most states, including Oklahoma. The resulting effect of the impending arbitration was that the BOC's generally have been unwilling to offer rates, terms and conditions as part of a negotiated interconnection agreement which were any more favorable to the CLEC than the positions which the BOC anticipated advocating in its arbitration proceedings, presumably based on a fear that the offering of more favorable rates, terms or conditions in a negotiated agreement would tend to undermine the BOC's position in arbitration.

Given these conflicting considerations, a key factor in Brooks' evaluation of whether to sign a negotiated agreement or to arbitrate involved what generally is referred to as "most favored nations" or "more favorable provisions" rights. As part of its interconnection agreement with SWBT, Brooks has the right to opt-into various categories of provisions of interconnection agreements that SWBT enters into with other carriers. See, Section XXIV of the Brooks-SWBT interconnection agreement. This contractual right to opt-into more favorable provisions -- when combined with the assumption that one or more of the larger CLEC's, like AT&T, would likely arbitrate with SWBT -- provided Brooks with knowledge that at some time in the future it would be able to modify a Brooks-SWBT negotiated agreement by opting into provisions of another carrier's interconnection agreement whose rates, terms and conditions result from an arbitration process. Thus, Brooks' contractual "more favorable provision" rights creates the potential for improvement of the rates, terms and conditions of its interconnection agreement on an after-the-fact basis. Nevertheless, there are risks associated with reliance on the more favorable provisions rights -- primarily the fact that Brooks does not control which issues another carrier chooses to arbitrate or how aggressively it may pursue issues which may be of particular importance to Brooks, and the uncertainty of how long it may be before an arbitration actually results in a signed and Commission-approved interconnection agreement (again, as illustrated by the current situation with the AT&T-SWBT arbitration).

After weighing all of these considerations, Brooks ultimately decided to move forward with interconnection implementation by signing a negotiated interconnection agreement with SWBT for Oklahoma. By signing and supporting that interconnection agreement, however, Brooks did not (and does not) concede that the rates, terms and conditions contained therein are consistent with and satisfy the substantive requirements of Sections 251 and 252 of the Act. The standard for approval of a negotiated interconnection agreement is limited in nature -- such an agreement can only be rejected if found to discriminate against non-parties, or if found to be "not consistent with the public interest, convenience and necessity...". See, Section 252(e). As part of the interconnection agreement, Brooks asserted that the agreement met the limited standard of Section 252(e), but Brooks otherwise explicitly refrained from making any additional concessions concerning the rates, terms and conditions of the agreement. See, Section XXIV of the Brooks-SWBT agreement. Brooks did not have access to SWBT cost studies during the course of the negotiation process, and thus had no specific information in its possession to confirm whether the rates contained in its interconnection agreement with SWBT are set on appropriately calculated cost bases. Nor has the Commission been called on to make any determination on the merits regarding whether the rates contained in the Brooks-SWBT

interconnection are set at cost-based levels.

Because of its intended use of unbundled loops and physical collocations, Brooks is particularly concerned regarding the prices of these items. The unbundled loop price contained in the interconnection agreement is \$17.63, which is the same as the statewide Oklahoma "proxy ceiling" price identified by the FCC.⁷ To Brooks' knowledge, the Commission has not been presented with information establishing that this rate is based on a cost appropriately calculated, and the Commission has made no on-the-merits determination in that regard. With respect to the costs of physical collocation, Brooks is finding that the price quotations it receives from SWBT are substantially greater than what Brooks encounters with other BOC's for similar collocation arrangements. However, with collocation Brooks is faced with a similar price/timing dilemma as described above regarding interconnection generally – i.e., the fact that litigation of price issues risks substantial delay in Brooks' ability to complete and activate collocation facilities, with resulting delay in entering the market in a meaningful manner. With respect to collocation with SWBT, Brooks is taking the approach of paying SWBT's price quotes in order to have the collocations completed, while reserving its rights to pursue recovery of excessive costs on an after-the-fact basis.

As with the unbundled loop prices, other rates contained in the Brooks-SWBT interconnection agreement also lack any on-the-merits demonstration of being based on appropriate cost calculations. Two examples are the resale discount and the price of remote call forwarding for interim number portability. The resale discount in the Brooks-SWBT interconnection agreement is 15.4%. While SWBT represents this discount as reflecting avoided cost, Brooks has not had access to SWBT's avoided cost information, and the discount is less than that established in the AT&T-SWBT arbitration decision. With respect to charges for remote call forwarding/interim number portability (RCF/INP), again Brooks has not had access to any supporting cost information. Moreover, there is has been no showing by SWBT that the rates contained in the Brooks-SWBT interconnection agreement are consistent with the FCC's directives regarding recovery of such costs.⁸

III. APPLICATION OF SECTION 271 STANDARDS TO BROOKS' OPERATIONAL STATUS

Brooks does not have specific information concerning the interconnection status of any other CLEC's in Oklahoma, but understands and believes that it is the first CLEC to complete

⁷ Ironically, the price of unbundled loops to Brooks actually increased during the course of negotiations after the FCC's August 8, 1996 Interconnection Order. The parties had reached closure on this pricing issue prior to the FCC's order, at a price that turned out to be lower than the FCC's proxy ceiling rate for Oklahoma of \$17.63. However, subsequent to the FCC's August 8 Order but prior to resolution of other issues and execution of the interconnection agreement SWBT revised its position on unbundled loop pricing such that the price offered to Brooks was then and thereafter \$17.63, notwithstanding the fact that the FCC identified its proxy rates as ceiling prices rather than minimum or prescribed prices. As a "negotiated" rate, the \$17.63 rate prevails in the Brooks-SWBT contract notwithstanding the subsequent stay of the pricing portions of the FCC's August 8, 1996 Order pending federal appellate court review.

⁸ See, First Report and Order and Further Notice of Proposed Rulemaking

initial interconnection with SWBT and to begin commercial operations in the State. Accordingly, Brooks herein provides analysis regarding the Section 271 interLATA long-distance entry requirements only in the context of its operational status and its experience with SWBT.

A. BOC INTERLATA ENTRY UNDER SECTION 271

1. OVERVIEW

The mechanism for BOC entry into interLATA services under the Act is a three-part substantive test to be applied by the FCC. In summary, BOC interLATA cannot be approved unless the FCC finds that:

- a. the BOC has met the requirements of (c)(1)(A) or (c)(1)(B) and, in either instance, access and interconnection is being provided (in the case of "Track A") or is being offered (in the case of "Track B") consistent with the "competitive checklist" set forth in Section 271(c)(2)(B);
- b. the authorization will be carried out in accordance with the separate affiliate requirements of section 272; and
- c. the requested authorization is consistent with the public interest, convenience, and necessity.

2. THE "TRACK B" APPROACH – SECTION 271(c)(1)(B)

Section 271(c)(1)(B) contains what has come to be known as the "Track B" approach. It provides as follows:

(B) FAILURE TO REQUEST ACCESS -- A Bell operating company (C) meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

Track B is, on its face, not applicable under the circumstances in Oklahoma. SWBT cannot, as this provision requires, assert and demonstrate that "no such provider has requested the access and interconnection described in subparagraph (A)". Brooks submitted its interconnection request to SWBT for Oklahoma in April, 1996 and that request culminated in the Brooks-SWBT interconnection agreement which has been approved by this Commission. Based on the AT&T arbitration and interconnection agreements submitted by other carriers (e.g., U S Long Distance and Sprint) it is clear that SWBT received multiple requests for interconnection prior to 10 months after the passage of the Act. As a result, Track B is not applicable in Oklahoma. The unambiguous terms of Section 271(c)(1)(B) establish that the vehicle of filing a Statement of Generally Available Terms as a vehicle for interLATA entry was intended as a mechanism to avoid a BOC being "frozen out" from applying for interLATA entry due solely to the inaction of potential interconnectors. This is evident from the plain wording of the provision – i.e., "...if...no such provider has requested the access and interconnection described in subparagraph (A)...", and from the provisos contained at the conclusion of the subparagraph, which specify circumstances under which Track B may be utilized notwithstanding the fact that one or more providers has requested interconnection – i.e., where the interconnectors have either not pursued negotiations or failed to implement interconnection within a reasonable period of time. It is clear that this subparagraph is intended to provide a default option to protect the BOC's from circumstances due to interconnector inaction which is wholly beyond the BOC's control – i.e., where CLEC's either fail to request interconnection or, having requested interconnection have failed to pursue negotiations, or have failed to pursue implementation of interconnection after an agreement and within a reasonable period of time. These required circumstances do not exist in Oklahoma, and Track B is simply not applicable as a potential interLATA entry mechanism under the terms of the Act.

3. THE "TRACK A" APPROACH – SECTION 271 (c)(1)(A)

Section 271(c)(1)(A) contains the primary vehicle for BOC interLATA entry. In pertinent part it provides as follows:

- (A) A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Thus, the "Track A" standard can be summarized as requiring that the BOC have at least

one approved interconnection agreement with a competitor that is providing local exchange service to both residential and business subscribers at least predominantly over its own facilities. Moreover, a condition for entry under either "Track A" or "Track B" is compliance with the "competitive checklist". Pursuant to Section 271©(2)(A),

- (A) A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought –
 - (i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or
(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and
 - (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

The "competitive checklist" is, in turn, set out at Section 271©(2)(B). Among other things, the checklist includes:

- (i) (Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) [and]
- (ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)...[and]
- (iii) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

Thus, in evaluating the Section 271 entry standards in light of Brooks' current operational status, the critical questions that must be answered consistent with the purposes of the Act include:

Q: Is SWBT providing Brooks access to unbundled network elements and interconnection consistent with substantive standards of Sections 251(c)(2) and (3), and 252(d)(1)?

Q: Is Brooks offering telephone exchange service to residential and business customers either "exclusively...or predominantly over [its] own telephone exchange facilities...", as those terms are reasonably interpreted consistent with the purposes of the Act?

With respect to the first question, Brooks believes the clear answer is, "no". The Track A requirement is that the BOC is providing access and interconnection consistent with the substantive standards of Section 251(c)(2) and (3) and 252(d)(1). This language clearly contemplates the actual provision of these elements and functions in a meaningful manner, not just the mere signing and approval of an interconnection agreement, which offers, unbundled elements and interconnection. As discussed above, Brooks is not yet able to begin leasing of unbundled loops from SWBT, due to the delay in completion of collocations in SWBT central offices. This is critical to an evaluation of the Section 271 standards, particularly in the circumstances of a CLEC like Brooks, whose planned primary method of originating service is

through unbundled loops. At this point and despite its best efforts, Brooks does not yet have unbundled loop availability from SWBT and, as a result, item (ii) of the competitive checklist is not met by Brooks' current operational status.

Furthermore, even if the facts were different and Brooks was leasing and utilizing SWBT's unbundled loop facilities under the Brooks-SWBT interconnection agreement, SWBT would not have satisfied item (ii) of the competitive checklist because there has been no showing -- and no on-the-merits determination -- that rates, terms and conditions contained in the Brooks-SWBT interconnection are accurately set based on SWBT's cost of providing various elements and services as required by Section 252(d)(1). The lack of any demonstration of cost-based pricing applies not only to the unbundled loop network elements, but also to all other important items covered by the Brooks-SWBT interconnection agreement including, collocation prices, the resale discount and RCF/INP prices.

With respect to the second question, Brooks again believes that the clear answer is, "no". Indeed, it strains credulity to suggest that -- in comparison with SWBT's ubiquitous network -- Brooks' current provision of service over its finite transmission rings constitutes the offering of service "exclusively... or predominantly over [its]... own telephone exchange service facilities...", particularly given the current lack of broad availability and usage of SWBT unbundled loop facilities.

Even when SWBT's unbundled loops and other unbundled network elements become broadly available and widely utilized, CLEC's which combine those elements with their own networks will remain highly dependent upon SWBT for a fundamental input to the CLEC's services to its customers. Brooks believes that the "exclusively/predominantly" test, reasonably interpreted, is one of effective freedom from substantial dependence on the incumbent CLEC's facilities. This is confirmed by the common and established definition of the term, "predominant" -- e.g., "to exert controlling power or influence, to hold an advantage in numbers or quantity," (Webster's Third New International Dictionary at 1786 (1986); and, "something greater or superior in power and influence to others with which it is connected or compared," (Black's Law Dictionary 1060 (5th Ed. 1979)). Brooks' own fiber optic transmission systems in Oklahoma City and Tulsa cannot -- by any stretch of the imagination -- be characterized as "predominant" in comparison to SWBT's ubiquitous loop/switching/interoffice transport system. The originating "reach" of Brooks' network will be substantially smaller than that of SWBT's network for the foreseeable future, and Brooks will only be able to approach the originating reach of SWBT on a competitive basis when it has pervasive and reliable access to SWBT unbundled loop facilities at cost-based prices, with effective monitoring to protect against anti-competitive/discriminatory provisioning, maintenance and related support functions.

At this very early stage in of local exchange competition in Oklahoma, Brooks is anything but free from dependence on SWBT's facilities. On the contrary, Brooks experience with deploying collocations illustrates SWBT's continuing control over critical bottleneck facilities, and Brooks must advance over the collocation hurdle before it can reach the next critical hurdle -- on-going reliance on SWBT leased unbundled loops and on reliance on SWBT's ordering, provisioning, maintenance and related support systems. Under these circumstances, any contention that SWBT currently meets the Section 271 standard for entry into the interLATA

market is wholly untenable and without merit.

4: PUBLIC INTEREST TEST

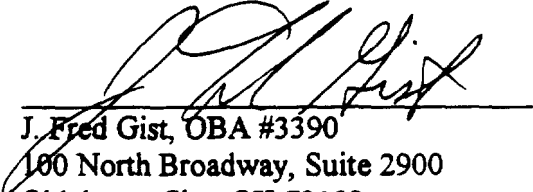
The public interest test is a broad standard and the effect of a grant of authority on competition in the relevant market has historically been construed as a key factor in a public interest determination. See, FCC v. RCA Communications, Inc., 346 U.S. 86, 90, 91 (1953); United States v. FCC, 652 F. 2d 72, 81-82 (D.C. Cir. 1980) (en banc). As applied to the issue of Section 271 interLATA entry, the public interest test must focus on an evaluation of whether a grant of a BOC's in-region interLATA application at a particular time will, on balance, produce benefits for consumers -- both short and long term -- by creating, preserving and enhancing competition in the local exchange and inter-exchange markets. Thus, an assessment must be made whether BOC interLATA entry at a particular time will limit or impede the development of competition in the BOC's local exchange market in the state covered by the application, and whether such entry will harm existing competition in the interLATA long-distance market.

As explained, at this early stage of local exchange competition Brooks is highly dependent upon the facilities and systems of SWBT. As a result, SWBT retains substantial power to materially affect and impede Brooks' ability to operate successfully in local exchange markets in Oklahoma. Once SWBT is granted interLATA authority, its incentive to cooperate and avoid activities, which impede local exchange competition, will be substantially reduced. As a result, based on presently available information and under current circumstances, Brooks believes that SWBT interLATA entry in Oklahoma at this point would be extremely premature and contrary to the public interest test under Section 271(c)(3)(C).

CONCLUSION

For the reasons identified herein, Brooks respectfully urges the Commission to conclude and advise the FCC – pursuant to Section 271(d)(2)(B) – that an interLATA services application by SWBT for Oklahoma under current circumstances would be premature and should be rejected.

Respectfully submitted,
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ATTORNEYS FOR MOVANTS, BROOKS FIBER
COMMUNICATIONS OF OKLAHOMA, INC.
AND BROOKS FIBER COMMUNICATIONS OF
TULSA, INC.

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

VERIFICATION

I, EDWARD J. CADIEUX, first being duly sworn, states on my oath that I am the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP). I am authorized to act on behalf of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications Tulsa, Inc., (both wholly-owned subsidiaries of BFP) regarding the foregoing Initial Comments. I have read the aforesaid Initial Comments and I am informed and believe that the matters contained therein are true and correct to the best of my knowledge.

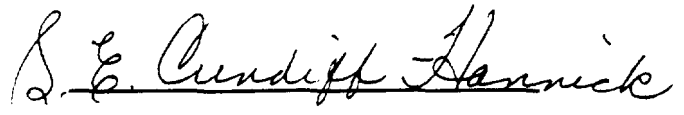
Dated:


EDWARD J. CADIEUX

EDWARD J. CADIEUX appeared, and being first duly sworn upon his oath, stated that he is the Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc. (BFP) and that he signed the foregoing document as Director, Regulatory Affairs - Central Region of Brooks Fiber Properties, Inc., and the facts contained therein are true and correct according to the best of his knowledge.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal in the aforesaid County and State on the above date.

Dated: *March 10, 1997*


NOTARY PUBLIC

My Appointment Expires: *October 11, 1999*

**COMPETITIVE
GENERAL EXCHANGE CARRIER
SERVICES
OF
BROOKS FIBER COMMUNICATIONS
OF TULSA, INC.**

ISSUED: August 8, 1996

EFFECTIVE: October 8, 1996

**By: D. Craig Young, President
425 Woods Mill Road, Ste. 300
Town & Country, MO 63017**

DEFINITIONS

1.1. Certain terms used generally throughout this tariff are defined below:

Account Codes: Allows a User to allocate local calls to a 4-digit, non-verified account code.

Advance Payment: Payment of all or part of a charge required before the start of service.

Authorized User: A person, firm, corporation, or other entity that either is authorized by the Customer to use local exchange telephone service or is placed in a position by the Customer, either through acts or omissions, to use local exchange telephone service.

Bit: The smallest unit of information in the binary system of notation.

Call Back/Camp On: Permits a station line encountering an all-trunk-busy condition the option of being notified when a trunk becomes idle.

Call Forwarding Busy: Automatically routes incoming calls to a designated answering point when the called line is busy.

Call Forwarding Don't Answer: Automatically routes incoming calls to a designated answering point when the called line is not answered after a preset number of rings.

Call Forwarding Remote: Automatically redirects all incoming calls to the called telephone number to a predesignated telephone number.

Call Forwarding Station: Allows calls directed to a station line to be routed to a user defined line inside or outside the Customer's telephone system.

Call Forwarding System: Permits calls attempting to terminate to a busy station line to be re-directed to a predetermined line inside or outside the customer's telephone system.

Call Forwarding Variable: Automatically routes incoming calls to a designated answering point, regardless of whether the User's Station is idle or busy.

Call Hold: Allows the user to hold one call for any length of time provided that neither party goes On Hook.

Call Park: Allows a User to "park" a call against their directory number within the business group and "unpark" the call from any other directory number. A business group consists of a series of Customer-defined telephone numbers.

Call Trace: Allows the customer to dial a code to automatically request a record of the caller's originating telephone number, the date, and time of the call, as well as the date and time of the customer initiated trace. The information is stored and disclosed only to a law enforcement agency for investigation purposes. The customer does not receive any information regarding the origination of the calls.

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DEFINITIONS - (Continued)

Call Transfer/Consultation/Conference: Provides the capability to transfer or add a third party, using the same line.

Call Waiting: Provides the User with a burst of tone to indicate that another call is waiting. The second call can either be answered by flashing the switchhook or hanging up the phone and being rung back by the caller.

Call Waiting Cancel: Allows a user to cancel the Call Waiting feature on a per call basis by dialing a specific two digit code.

Calling Line Identification: Displays the caller's name and telephone number from which the call is originating, before the called party answers the phone.

Calling Number Delivery: Identifies the 10-digit number of the calling party.

Calling Number Delivery Blocking: Blocks the delivery of the number to the called party on a per call basis.

Communications Services: The Company's local exchange switched telephone services offered for both intraLATA and interLATA use.

Company: Brooks Fiber Communications of Tulsa, Inc., which is the issuer of this tariff.

Completed Call: A call, or other telephonic communication, originated by a person or mechanical/electrical device from a number to another number which is answered by a person or mechanical/electrical device. The numbers may be located any distance apart within Tulsa; and the communication may consist of voice, data, a combination of both, or other transmission via a wire or wireless medium; and may be for any duration of time.

Conference/Six-Way: The User can sequentially call up to five other people and add them together to make up a six-way call.

Customer: The person, firm, corporation or other entity which orders service and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Customer Changeable Speed Calling: Allows a subscriber to establish a speed calling list, each of which is associated with a unique 1-digit and/or 2-digit speed calling code. Initial entry and changing of a speed calling list are directly input from the associated subscriber line. This feature is available as an eight code list or thirty code list. Code lists may include local and/or toll telephone numbers. To establish or change a telephone number in a code list, the customer dials an activating code, receives a second dial tone and dials either a one or two digit code, plus the telephone number.

Customer Group Dialing Plan: A dialing scheme shared by the members of a Customer group, such as 4 digit internal dialing.

Deny Terminating: Allows customer to automatically block incoming calls from up to 10 customer preselected telephone numbers (including numbers from which a customer has just received a call).

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DEFINITIONS - (Continued)

Callers whose numbers have been blocked will hear a recorded message.

Dial Pulse (DP): The pulse type employed by rotary dial Station sets.

Direct Inward Dialing (DID): A service attribute that routes incoming calls directly to Station, by-passing a central answering point.

Distinctive Ring: Differentiates incoming calls from up to ten customer preselected telephone numbers by signaling the customer with a distinctive ringing pattern.

Do Not Disturb: Allows the User to prevent incoming calls from ringing its line by diverting them to a tone or a recorded announcement that informs the caller that the User is not accepting calls at this time.

Dual Tone Multi-Frequency (DTMF): The pulse type employed by tone dial Station sets.

Fiber Optic Cable: A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone services.

Holidays: New Year's Day (January 1), Memorial Day (third Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), and Christmas Day.

Hunting:

Sequential Hunting: A hunting arrangement that provides for sequential hunt over members identified within the hunt group. The hunt for an idle line begins at the telephone number dialed and proceeds sequentially through the lines identified in the hunt group until an idle line is found or the last assigned number within the hunt group is reached. If an idle line is found, the hunt stops and the idle line is rung. If all lines are busy, the caller receives a busy.

Circular Hunting: A hunting arrangement similar to sequential hunting except, if no idle line is found by the time the last line in the group is reached, the hunt circles back to the first line in the group and hunts up to but not including the line where the hunt started.

In-Only: A service attribute that restricts outward dial access and routes incoming calls to a designated answer point.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Joint User: A person, firm or corporation designated by the Customer as a user of local exchange service furnished to the Customer by the Company, and to whom a portion of the charges for such facilities are billed under a joint use arrangement.

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DEFINITIONS -- (Continued)

Kbps: Kilobits, denotes thousands of bits per second.

Last Number Redial: Enables a station line user to redial the last called number by use of an access code rather than dialing the entire number.

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Least Idle Trunk Selection (LIDL): LIDL trunk selection occurs when a switching unit selects from a Trunk group the Trunk that has been idle for the shortest period of time.

Local Calling: A completed call or telephonic communication between a calling Station and any other Station within the local service area of the calling Station.

Local Exchange Carrier: A company which furnishes exchange telephone service.

Mbps: Megabits, denotes millions of bits per second.

Message Waiting: This feature provides an indication to a Station User that a message is waiting. Indications may be visual (lamp) or audible (stuttered dial tone).

Most Idle Trunk Selection (MIDL): MIDL Trunk selection occurs when a switching unit selects from a Trunk group the Trunk that has been idle for the longest period of time.

Multiple Appearance Directory Numbers: A directory number that is assigned more than once to one or more Proprietary Business Sets.

Multi-Frequency ("MF"): An inter-machine pulse-type used for signaling between telephone switches, or between telephone switches and PBX/key systems.

Non-Recurring Charges: The one-time charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the service Order is executed.

Off-Hook: The term "off-hook" denotes the active condition of a telephone exchange service line.

On-Hook: The term "on-hook" denotes the idle condition of a telephone exchange service line.

Presubscription - 2: An arrangement whereby a Customer may select and designate to the Company an Exchange Carrier it wishes to access, without an access code, for completing intraLATA toll Calls. The selected Exchange Carrier is referred to as the End User's Primary Interexchange Carrier (PIC-2).

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Regular Business Hours: 8:00 am through 5:00 p.m., Monday through Friday, excluding defined Holidays.

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DEFINITIONS - (Continued)

Remote Activation of Call Forwarding: Allows the user to activate and/or deactivate the Call Forwarding feature from any remote location, using a Touch-tone phone.

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order for this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance of service. The parties may mutually agree on a substitute Service Commencement Date.

Service Order: The written request for local exchange services executed by the Customer and the Company in a format specified by the Company. The signing of a Service Order by the Customer and acceptance thereof by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

Services: The Company's telecommunications services offered on the Company's network.

Shared Facilities: A facility or equipment system or subsystem which can be used simultaneously by several Customers.

Speed Call: Provides a User with the option to call selected directory numbers by dialing a one or two-digit code.

Station: Telephone equipment from or to which calls are placed.

Three-Way Calling: Allow a station in the talking state to add a third party to the call. This feature may be used on both incoming and outgoing calls.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end to end connection.

User: A customer or any other person authorized by the Customer to use service provided under this tariff.

Voice Data Protection: Prevents data calls from being interrupted by call waiting tones, testing, or busy verification attempts.

ISSUED: August 8, 1996**EFFECTIVE: October 8, 1996**

By: D. Craig Young, President
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GENERAL EXCHANGE SERVICE

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GENERAL EXCHANGE SERVICE

2. Regulations2.1 Undertaking of the Company:2.1.1 Scope

The Company undertakes to furnish communications service in connection with one-way and/or two-way information transmission between points within the Company's certificated area in the state of OKLAHOMA under the terms of this tariff.

Customers may use services and facilities provided under this tariff to obtain access to services offered by other service providers. The Company is responsible under this tariff only for the services and facilities provided herein, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

2.1.2 Shortage of Equipment Facilities

2.1.2.1 The Company reserves the right to limit or allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.

2.1.2.2 The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's fiber optic cable facilities as well as facilities the Company may obtain from other carriers, from time to time, to furnish service as required at the sole discretion of the Company.

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